

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

RICHARD JAMES JOHNSON #1005689           §  
VS.   §                       CIVIL ACTION NO. 6:24cv088  
SHERIFF LARRY R. SMITH                       §

REPORT AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE

Petitioner Richard James Johnson, an inmate proceeding *pro se* and *in forma pauperis*, filed two separate petitions for a writ of habeas corpus arising from a parole revocation. The petitions were originally opened as separate matters, but the Court promptly consolidated them into this action. (Dkt. #4.) The matter is referred to the undersigned United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

On May 15, 2024, the Court observed that Petitioner had filed two petitions and a motion to amend, and that there can only be one operative petition in a habeas case. (Dkt. #17.) Accordingly, the Court granted the motion to amend and gave Petitioner thirty days to file a single, comprehensive petition. (*Id.*) Petitioner has failed to comply with that order, and he has taken no action to prosecute this case since that date.

A district court may dismiss an action for the failure of a litigant to prosecute or to comply with any order of the court. Fed. R. Civ. P. 41(b); *see also McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988) (“The court possesses the inherent authority to dismiss the action *sua sponte*, without motion by a defendant.”); *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (explaining that a habeas petition may be dismissed pursuant to Rule 41(b)). Further, the district

court has both specific and inherent power to control its own docket “to control the disposition of the causes on its docket with economy of time.” *See U.S. v Colomb*, 419 F.3d 292, 299 (5th Cir. 2005); *see also Miller v. Thaler*, 434 F. App’x 420, 421 (5th Cir. 2011) (unpublished).

Here, Petitioner failed to comply with the order directing him to file a single amended petition to proceed with this case. Dismissal with prejudice for failure to prosecute or to comply an order of the Court is an extreme sanction that should be employed only when “the plaintiff’s conduct has threatened the integrity of the judicial process [in a way that] leav[es] the Court no choice but to deny that plaintiff its benefit.” *McNeal v. Papasan*, 842 F.2d 787, 790 (5th Cir. 1988) (citing *Rogers v. Kroger Co.*, 669 F.2d 317, 321 (5th Cir. 1982)). A court should consider lesser sanctions, such as fines, costs, damages, conditional dismissals, and dismissal without prejudice, among other lesser measures, prior to dismissing an action with prejudice. *McNeal*, 842 F.2d at 793.

Petitioner’s failure to comply with an order is not an action that threatens the judicial process—thereby rendering a dismissal with prejudice unwarranted. Therefore, upon consideration of all relevant factors, the Court has determined that the interests of justice are best served by a dismissal of this case without prejudice. The judgment of dismissal should apply to both this case and the companion case, No. 6:24-096.

#### RECOMMENDATION

Accordingly, it is recommended that the above-styled habeas corpus action be dismissed, without prejudice, for Petitioner’s failure to comply with an order of the Court and to file a single coherent petition. It is further recommended that Petitioner be denied a certificate of appealability *sua sponte*.

Within fourteen (14) days after receipt of the Magistrate Judge's Report, any party may serve and file written objections to the findings and recommendations contained in the Report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

**So ORDERED and SIGNED this 26th day of August, 2024.**

  
JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE